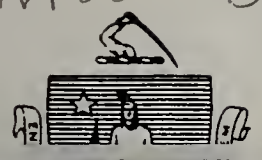
MASS. BD1.2: M38/5 ✓



UMASS/AMHERST

312066 0269 7483 7

Commonwealth of Massachusetts
Massachusetts Office of Business Development

One Ashburton Place, Room 2101
Boston, Massachusetts 02108

GOVERNMENT DOCUMENTS
COLLECTION

MAY 12 1995

University of Massachusetts
Depository Copy

WILLIAM F. WELD
GOVERNOR

ARGEO PAUL CELLUCCI
LIEUTENANT GOVERNOR

GLORIA CORDES LARSON
SECRETARY

MICHAEL P. HOGAN
EXECUTIVE DIRECTOR

TELEPHONE :
(617) 727-3206
FAX :
(617) 727-8797

MASSACHUSETTS CLEAN SITES INITIATIVE

Welcome to the Massachusetts Clean Sites Initiative, a program created by the state to protect new owners and lessees of contaminated property from potential liability under the Massachusetts Superfund Law.

In this packet are the materials you will need to apply for participation in the program. The enclosed fact sheet describes the application review process. Further inquiries may be directed to the Massachusetts Office of Business Development (MOBD) in your region.

The application has four parts. You should complete Parts I and II, and then forward the entire application to the MOBD in Boston. If no additional negotiations are required for your project, you can expect a decision on your application for a *Covenant Not to Sue* within thirty days of its receipt by MOBD.

To ensure quick processing of your Massachusetts Clean Sites Initiative Application, please forward it to:

Massachusetts Clean Sites Initiative
Massachusetts Office of Business Development
One Ashburton Place
Boston, Massachusetts 02108

Thank you for your interest in the Massachusetts Clean Sites Initiative. We look forward to working with you on your application and wish you the best in your business endeavors.

enclosures

February 9, 1995

CLEAN SITES INITIATIVE ESTABLISHES COVENANTS TO ENSURE CLEANUPS, PREVENT FUTURE STATE LAWSUITS AT HAZARDOUS WASTE SITES

PURPOSE: Covenants between the Commonwealth of Massachusetts and prospective buyers or tenants will encourage **cleanup and redevelopment of contaminated property** in areas targeted by the Commonwealth for economic development, by ending liability for releases that occurred in the past once cleanup is complete.

WHAT A COVENANT WILL PROVIDE: With a Covenant, the prospective buyer/tenant agrees to ensure that known contamination of a property will be cleaned up as required by law. The cleanup may be conducted by the new owner or tenant, a former owner, or another party. Cleanups must eventually reach a Permanent Solution at the property. All of the tools provided by the 1993 Massachusetts Contingency Plan are available to be used (e.g., Temporary Solutions, Activity and Use Limitations, Declarations of Technical, Legal or Financial Inability, etc.).

In turn, the Commonwealth agrees not to sue the new owner or tenant for response action costs or damages once the site has been cleaned up if contamination is later found on the property. Once a property has been cleaned up, the Covenant will apply to the land identified in a Response Action Outcome Statement filed with DEP. Until cleanup actions are complete, the Covenant will apply to the property being investigated (and identified in the application).

The Commonwealth also agrees that the Covenant holder will not have to pay for contamination-related damage to natural resources on and around the site. Once property with a Covenant has been permanently cleaned up, the Commonwealth will not attach a lien to that property for recovery of any expenses the Commonwealth incurs as part of additional response actions for the release(s) addressed by the Covenant.

A Covenant will **not** bar damage claims brought by third parties (i.e., people who believe that contamination at a site has damaged them or their property). Nor will it relieve anyone from responsibility for cleaning up new releases of oil or hazardous materials that occur after the Covenant takes effect.

WHAT PROJECTS ARE ELIGIBLE:

- Projects must involve reuse or redevelopment for commercial or industrial activities.

- Any contaminated property located within an Economic Target Area designated by the Massachusetts Economic Assistance Coordinating Council is automatically eligible for a Covenant.

- A project not located within an Economic Target Area may be eligible if the Secretary of Economic Affairs determines that it presents an economic development opportunity.

A property that is not contaminated, or that has already been cleaned up to meet DEP's requirements, is not eligible for a Covenant.

WHO IS ELIGIBLE: A Covenant may be obtained by a prospective purchaser or prospective tenant who is willing to ensure that a contaminated property is properly cleaned up as required by the Massachusetts Superfund law (c. 21E) and regulations (the Massachusetts Contingency Plan, or MCP). An applicant cannot be a potentially responsible party for the cleanup of the site where the redevelopment project will be located when the application is submitted.

APPLICATION PROCESS: Application forms are available from the **Massachusetts Office of Business Development and DEP's Regional Service Centers** (see attached list for locations). Applications should be submitted to **the Boston Office of the Massachusetts Office of Business Development.** The application asks for basic information about the redevelopment project and the disposal site, and requires the applicant to certify:

- That she/he is a bona fide prospective purchaser or prospective tenant who has no legal responsibility for cleanup;

- That she/he is not currently subject to pending administrative or judicial enforcement actions for compliance with environmental laws and regulations (or the applicant must disclose all such actions, and must have established an approved compliance schedule); and

- That she/he is willing and able to ensure that the site is cleaned up in accordance with c. 21E and the MCP.

The Massachusetts Office of Business Development will review applications to determine if the project and site are eligible. The Department of Environmental Protection will review the certifications listed above, and determine whether there are any outstanding bills for publicly-funded response actions at the site for which the Covenant is sought, DEP oversight of past response actions, or fees (arrangements to resolve these debts must precede

a Covenant). The Executive Office of Environmental Affairs will also review the application and recommend whether the Covenant should include costs associated with natural resource damages created by the release of oil or hazardous materials.

Once eligibility is established and these related conditions are met, the Office of the Attorney General will issue a **Covenant Not to Sue**, which takes effect upon its issuance.

The pilot program has established a goal of processing applications within 30 calendar days of receipt by the Massachusetts Office of Business Development (although reviews will take longer for applications for sites requiring negotiations to resolve debts to the Commonwealth or outstanding environmental compliance issues) . This should allow applicants to determine whether or not they will get a Covenant before they actually take title (or sign a lease) for property.

Please note: An applicant may take title to the property (or take possession via a lease) before the reviewing agencies decide whether to issue the Covenant Agreement. However, applicants should be aware that, if they do so and their application is denied, they will become potentially responsible parties under MGL c. 21E. Submittal of an application is not a guarantee that the Covenant Agreement will be provided.

ONCE THE COVENANT TAKES EFFECT: The buyer or tenant (Covenant holder) must make sure that all necessary response actions are performed at the site in compliance with the standards and timeframes established by the MCP. The Covenant holder may take advantage of all opportunities offered in the MCP to tailor the level of effort and cleanup to the needs of the particular site, including basing cleanup decisions on the uses of the property.

WHEN CAN A COVENANT BE REOPENED: There are two situations in which the Covenant can be reopened:

- before cleanup is completed, if DEP finds that response actions have not been conducted in substantial and material compliance with the MCP, or

- after cleanup is completed, if DEP finds that response actions did not meet the standard of care in effect at the time they were undertaken.

If a DEP audit identifies violations of MCP requirements, DEP will decide whether they warrant reopening the Covenant. If so, the Covenant holder (or her/his successor) will have an opportunity to correct violations and keep the Covenant in effect. If the violations do not warrant reopening the Covenant, the Commonwealth will fund corrective actions if necessary, and will not try to recover costs from the Covenant holder or successor.

If the Commonwealth finds that a Covenant was obtained through misrepresentation or fraud (e.g., false certification), the Covenant will be considered void.

FOR MORE INFORMATION:

- Applications are available at DEP Regional Service Centers and Massachusetts Offices of Business Development (see attached list for locations)

- Application packages include a list of areas that have been designated as "Economic Target Areas"

- Requirements for assessment and cleanup of contamination are established by M.G.L. c. 21E and the Massachusetts Contingency Plan (310 CMR 40.0000). Copies of the law and regulations are available from the State Bookstore in Boston and Springfield (Telephone: 617/727-2834 and 413/784-1378)

- Questions about the cleanup rules and requirements can be answered by the MCP Hotline (617/338-2255 in the 617 area code and outside of Massachusetts, 800/462-0444 if you are calling from the 508 or 413 area codes)

- An up-to-date list of Licensed Site Professionals ("LSPs", the experts licensed by the Commonwealth to manage site assessments and cleanups for private parties) is available from the Hazardous Waste Site Professional Board of Registration (617/292-5556).

ATTACHMENT

MASSACHUSETTS OFFICE OF BUSINESS DEVELOPMENT LOCATIONS

Statewide, Boston Region:	Massachusetts Office of Business Development One Ashburton Place, 21st Floor Boston, MA 02108 Telephone: 617/727-3206 Attention: Michael Hogan, Executive Director Gene Gebolys, Regional Director
Western Region:	One Armory Square c/o Springfield Technical Community College Springfield, MA 01105 Telephone: 413/784-1580 Attention: Bruce Stebbins, Regional Director
Central Region:	340 Main Street Worcester, MA 01608 Telephone: 508/792-7506 Attention: Nancy Jackson, Regional Director
Northeast Region:	600 Suffolk Street Lowell, MA 01854 Telephone: 508/970-1193 Attention: Jeff King, Regional Director
Southeast Region:	UMass - Dartmouth Dartmouth, MA 02747 Telephone: 508/997-1438 Attention: Gordon Carr, Regional Director

DEP REGIONAL SERVICE CENTER LOCATIONS

DEP Regional Service Centers are located in each of the agency's four regional offices:

<u>Western Region</u>
436 Dwight Street, Suite 402
Springfield, MA 01103
Telephone: 413/784-1100
Fax: 413/784-1149

<u>Central Region</u>
75 Grove Street
Worcester, MA 01605
Telephone: 508/792-7650
Fax: 508/792-7621

<u>Southeast Region</u>
20 Riverside Drive
Lakeville, MA 02347
Telephone: 508/946-2700
Fax: 508/947-6557

<u>Northeast Region</u>
10 Commerce Way
Woburn, MA 01801
Telephone: 617/932-7677
Fax: 617/932-7615

ECONOMIC OPPORTUNITY AREA DESIGNATIONS

The Economic Assistance Coordinating Council has designated the following Economic Opportunity Areas in Massachusetts, each of which is wholly within a designated Economic Target Area:

Ayer - Ayer and Fort Devens

Brockton - downtown

Fall River
- Waterfront
- I-195 Corridor
- South End
- Industrial Park

Fitchburg -- Fitchburg Mill # 8

Framingham - downtown

Gardner -- Fredette Street

Greenfield -- Interstate 91 Industrial Park

Haverhill -- downtown Haverhill

Holyoke -Lower Churchill area

Lawrence

Lowell
- Wang Towers
- Acre Neighborhood
- Central Business District-North

Montague -- Montague Industrial Park & Environs *(emergency designation, subject to Town Meeting vote)*

ECONOMIC TARGET AREA DESIGNATIONS

The Economic Assistance Coordinating Council has designated thirty-one Economic Target Areas in Massachusetts. The thirty-second ETA -- Ayer and Fort Devens, was designated by statute. The following communities are either partially or wholly within designated Economic Target Areas:

Attleboro*

Barnstable County
- Barnstable
- Bourne*
- Brewster
- Chatham
- Dennis
- Eastham
- Falmouth
- Harwich
- Mashpee
- Orleans
- Provincetown
- Sandwich
- Truro
- Wellfleet
- Yarmouth

Beverly & Salem

Billerica

Blackstone Valley Region
- Blackstone
- Douglas
- Grafton
- Hopedale
- Mendon
- Millbury
- Millville
- Northbridge
- Sutton
- Upton
- Uxbridge

Boston

Brockton

Cambridge

Cape Ann
- Essex
- Gloucester
- Ipswich
- Manchester-by-the-Sea
- Rockport

Central Berkshire County
- Lee
- Lenox
- Pittsfield

Chelsea

Fall River

Fort Devens & Ayer

Framingham-Marlborough Region
- Ashland
- Framingham
- Hudson
- Marlborough

Greater Franklin County
- Amherst
- Ashfield
- Athol
- Bernardston
- Buckland
- Charlemont
- Colrain
- Conway
- Deerfield
- Erving
- Gill
- Greenfield
- Heath
- Leverett
- Leyden
- Monroe
- Montague

New Salem
Northfield
Orange
Phillipston

Greater Franklin County
continued

Rowe
Shelburne
Sunderland
Wendell
Whatley

Greater New Bedford

Acushnet
Dartmouth
Fairhaven
Freetown
New Bedford
Rochester

Greater Taunton

Berkley
Dighton
Norton
Taunton

Haverhill*

Holyoke*

Lawrence

Lowell

Lynn

Middleborough

Northern Berkshire County

Adams
North Adams
Williamstown

Northern Worcester County

Gardner
Fitchburg
Leominster
Clinton
Ashburnham
Barre
Templeton
Westminster

Winchendon
Lunenburg
Lancaster
Hubbardston

Quincy Area

Braintree*
Hingham
Hull
Quincy
Weymouth

South Central Massachusetts

Brimfield
Charlton
Dudley
Holland
Oxford
Southbridge
Spencer
Sturbridge
Wales
Webster

Somerville

Springfield

Waltham

Wareham/Buzzards Bay

Bourne (Buzzards Bay)*
Wareham

Worcester

*Indicates that only a portion of the municipality is in the named ETA.

APPLICATION AND AGREEMENT
PILOT COVENANT NOT TO SUE PROGRAM
M.G.L. CHAPTER 21E

Part I. Description of Applicant and Proposed Project (to be completed by Applicant)

A. Description of Applicant

1. Name of Applicant(s):

2. Applicant's Mailing Address:

3. Name and Mailing Address of Applicant's Agent or Authorized Representative (if any):

4. Telephone Numbers:

Applicant:

Agent of Authorized Representative:

5. Fax Numbers:

Applicant:

Agent of Authorized Representative:

6. Applicant's Status (check one):

[ ] Prospective Owner of Property

[ ] Prospective Lessee

[ ] Other (explain):

B. Description of Proposed Project

1. Location of Project

Street Address:

Municipality:

Zip Code:

2. Please describe the proposed project, including the nature of the proposed business and the anticipated economic development benefits:

3. Is the proposed project located in an Economic Target Area (ETA) established by Economic Affairs pursuant to M.G.L. c. 23A, §§ 3A-3F?

[ ] Yes

If yes, please identify ETA:

[ ] No

If no, please attach a statement explaining why the proposed project presents an economic development opportunity.

C. Description of Disposal Site(s)

1. DEP Release Tracking No(s). __-_____, __-_____

2. Describe the relationship of the disposal site(s) to the parcel(s) of land on which the proposed project will be located (check one):

[ ] the disposal site(s) encompasses the entire parcel(s) of land, as well as other parcels

[ ] the disposal site(s) encompasses a portion of the parcel(s) of land, as well as other parcels

[ ] the disposal site(s) lies wholly within the boundaries of the parcel(s) of land

[ ] the relationship of the disposal site(s) to the parcel(s) of land is unknown at this time.

3. Please attach a copy of a current survey plan, assessors plan or plot plan of the parcel(s) of land on which the proposed project will be located.

4. If you intend to record or register the covenant not to sue, please attach a copy of the legal description of the parcel(s) of land on which the proposed project will be located.

Part II. Applicant's Certification

A. To be completed by Applicants who are acting in their individual capacity only:

I, _____, attest:
Name of Applicant

1. that I have personally examined and am familiar with the information contained in this Application, including any and all documents accompanying this Application;

2. that I am not a person potentially liable and, except as fully disclosed in Attachment 1 attached hereto and made a part hereof, am not now and have not previously been affiliated with any person or entity potentially liable under M.G.L. c. 21E for response action costs or damages to natural resources caused by the release(s), and/or threat(s) of release, of oil or hazardous materials that is the subject of DEP Release Tracking No(s). _____ (the "Site") through any direct or indirect familial relationship or any contractual, corporate or financial relationship other than that by which Applicant's interest in such property is to be conveyed or financed;

3. that I am willing and able to ensure that necessary and appropriate response actions are conducted and maintained at the Site in compliance with M.G.L. c. 21E, the Massachusetts Contingency Plan (310 CMR 40.0000), 310 CMR 4.00, and other laws and regulations that apply to such response actions;

4. that, except as fully disclosed in Attachment 2 attached hereto and made a part hereof, I am not subject to any outstanding administrative or judicial environmental enforcement action (e.g. a Notice of Noncompliance, a Notice of Responsibility, a Deficiency Notice, an Administrative or Judicial Order, Consent Decree or Judgment, etc.) under any federal, state, or local law;

5. that I have not received a Notice of Responsibility issued pursuant to M.G.L. c. 21E, or any similar notice issued pursuant to 42 USC 9601 et seq. (CERCLA), with respect to the Site; and

6. that I am aware that the covenant not to sue shall be void from its inception if any of the statements, certifications or information contained in this Application, including any and all documents accompanying this Application, are materially incomplete, misleading

or false.

Signed under the pains and penalties of perjury,

_____
Signature Date

_____
Print Name

_____
Title

/ / / / /

/ / / / /

B. To be completed by Applicants who are acting in any capacity other than that of an individual (e.g. corporations, trusts, partnerships, etc.):

I, _____, attest:
Name of Agent

1. that I am fully authorized to make this Application and to provide the requisite certifications on _____'s ("Applicant") behalf;
Name of Applicant

2. that I have personally examined and am familiar with the information contained in this Application, including any and all documents accompanying this Application;

3. that Applicant is not a person potentially liable and, except as fully disclosed in Attachment 1 attached hereto and made a part hereof, is not now and has not previously been affiliated with any person or entity potentially liable under M.G.L. c. 21E for response action costs or damages to natural resources caused by the release(s) and/or threat(s) of release of oil or hazardous materials that is the subject of DEP Release Tracking No.(s) _____ (the "Site") through any direct or indirect familial relationship or any contractual, corporate or financial relationship other than that by which Applicant's interest in such property is to be conveyed or financed;

4. that Applicant is willing and able to ensure that necessary and appropriate response actions are conducted and maintained at the Site in compliance with M.G.L. c. 21E, the Massachusetts Contingency Plan (310 CMR 40.0000), 310 CMR 4.00, and other laws and regulations that apply to such response actions;

5. that, except as fully disclosed in Attachment 2 attached hereto and made a part hereof, Applicant is not subject to any outstanding administrative or judicial environmental enforcement action (e.g. a Notice of Noncompliance, a Notice of Responsibility, a Deficiency Notice, an Administrative or Judicial Order, Consent Decree or Judgment, etc.) under any federal, state, or local law;

6. that Applicant has not received a Notice of Responsibility issued pursuant to M.G.L. c. 21E, or any similar notice issued pursuant to 42 USC 9601 et seq. (CERCLA), with respect to the Site; and

7. that Applicant is aware that the covenant not to sue shall be void from its inception if any of the statements, certifications or information contained in this Application, including any and all documents accompanying this Application, are materially incomplete, misleading or false.

Signed under the pains and penalties of perjury,

For:_____
Applicant

By:_____
Signature Date

_____
Print Name

_____
Title

/ / / / /

/ / / / /

Part III. Recommendations to the Attorney General

A. For Executive Office of Economic Affairs Use Only

The Project which is the subject of this Application: (check one)

[ ] is located in the following Economic Target Area designated by the Economic Assistance Coordinating Council: _____

[ ] is not located in an Economic Target Area but otherwise presents an economic development opportunity.

Based upon my review of the Application, and the representations made therein by the Applicant, I recommend to the Attorney General that the Project which is the subject of the Application is an eligible project under the Commonwealth's Pilot Covenant Not to Sue Program.

Issued by: _____
Secretary or Designee

Signature: _____

Date: _____

B. For Department of Environmental Protection Use Only

Based upon my review of the Application, and the representations made therein by the Applicant, I recommend (i) to the Secretary of Environmental Affairs that he/she recommend to the Attorney General that any covenant provided by the Commonwealth to Applicant under the Commonwealth's Pilot Covenant Not To Sue Program include a release from liability for any natural resource damages resulting from releases of oil or hazardous material which occurred at the Site prior to Applicant's acquisition of ownership or possession thereof; and (ii) to the Attorney General that the Applicant is an eligible applicant, and that any agreement with Applicant under the Commonwealth's Pilot Covenant Not to Sue Program include the specific conditions set forth in the Agreement below.

Issued by: _____
Commissioner or Designee

Signature: _____

Date: _____

C. For Executive Office of Environmental Affairs Use Only

Based upon my review of the Application, the representations made therein by the Applicant and the recommendation of the Commissioner of the Department of Environmental Protection or his designee, I recommend that the Attorney General enter into an Agreement with Applicant on behalf of the Commonwealth under the Commonwealth's Pilot Covenant Not to Sue Program, and that any such Agreement include the specific conditions set forth in the Agreement below, including, without limitation, a release for any natural resource damages resulting from releases of oil or hazardous material at the Site which occurred prior to Applicant's acquisition of ownership or possession thereof.

Issued by: _____
Secretary or Designee

Signature: _____

Date: _____

/ / / / /

/ / / / /

ATTACHMENT 1

DISCLOSURE OF AFFILIATIONS

ATTACHMENT 2

DISCLOSURE OF ENVIRONMENTAL COMPLIANCE HISTORY

COVENANT NOT TO SUE AGREEMENT

This Agreement is made this _____ day of _____, 19___, by _____ ("Applicant"), the Department of Environmental Protection ("DEP"), and the Attorney General on behalf of the Commonwealth of Massachusetts ("Commonwealth") pursuant to M.G.L. c. 21E, § 3A(j) (collectively referred to herein as "the Parties").

Whereas the Applicant has made certain representations to the Commonwealth in its Application attached hereto and made a part hereof; and

Whereas the Executive Office of Economic Affairs, the Department of Environmental Protection and the Executive Office of Environmental Affairs have recommended to the Attorney General that the Commonwealth enter into this Agreement on the basis, in part, of the representations made in the Application; and

Whereas suitable arrangements have been made for the payment of past response action costs and fees owing the Commonwealth for the Site which is the subject of the Application; and

In reliance on the representations made by Applicant in the Application that it will:

1. perform, or cause to be performed, the necessary and appropriate response actions at _____, _____, Massachusetts ("the Property"), in compliance with M.G.L. c. 21E, the Massachusetts Contingency Plan, 310 CMR 40.0000, 310 CMR 4.00 and other laws and regulations that apply to such response actions; and

2. pay or cause to be paid _____ dollars and _____ cents ($_____) to the Commonwealth, [such sum to be paid as set forth in Exhibit A hereto], such sum representing the Applicant's satisfaction of certain past response action costs and/or outstanding fees owing the Commonwealth for the past release(s) at or from the Property;

The Commonwealth agrees as follows:

1. that the Covenant Not To Sue attached hereto as Exhibit B and made a part hereof shall take effect upon execution of this Agreement; and

2. that DEP will promptly issue to Applicant the Certificate(s) of Completion ("Certificate") attached hereto as Exhibit C and made a part hereof upon:

a. receipt of a Class A or Class B Response Action Outcome Statement(s) for the release(s) prepared in

accordance with M.G.L. c. 21E, 310 CMR 40.0000, M.G.L. c. 21A, §§ 19 - 19J, and 309 CMR 1.00 - 8.00; and

b. receipt of payment in full of the sum set forth above, such sum representing all or a portion of the past costs and fees owing the Commonwealth for the release(s).

Except as expressly provided herein, nothing in this Agreement shall be construed as, or operate as, barring, diminishing, or in any way affecting any legal or equitable right of DEP or the Commonwealth to issue any order with respect to the release(s) or in any way affecting any other claim, action, suit, cause of action or demand which DEP or the Commonwealth may have with respect thereto.

The Applicant shall not be deemed a party liable under M.G.L. c. 21E, § 5(a), solely because Applicant has entered into this Agreement or paid or caused to be paid the sum set forth above.

Each signatory hereto hereby certifies that he or she is fully authorized to enter into the terms and conditions of this Agreement and to execute and legally bind the respective parties hereto.

/ / / / /

APPLICANT

By: _____

Title: _____

Date: _____

DEPARTMENT OF ENVIRONMENTAL PROTECTION

By: _____
Commissioner or Designee

Date: _____

EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS

By: _____
Secretary or Designee

Date: _____

COMMONWEALTH OF MASSACHUSETTS
Scott Harshbargar, Attorney General

By: _____
Attorney General or Designee

Date: _____

EXHIBIT A

PAYMENT SCHEDULE

EXHIBIT B

COVENANT NOT TO SUE

M.G.L. c. 21E, § 3A(j)

Pursuant to the terms and conditions of the Application and Agreement attached hereto as Exhibit A and incorporated herein by reference and M.G.L. c. 21E, § 3A(j), the Commonwealth of Massachusetts ("the Commonwealth"), by the Attorney General, covenants not to sue _____ ("Applicant") for claims under M.G.L. c. 21E for response action costs and injury or damage to natural resources arising out of the release(s) of oil and/or hazardous material(s) (*see* DEP Release Tracking Number(s) _____) at property commonly known as _____, _____, Massachusetts, and more particularly described in Exhibit B attached hereto and incorporated herein by reference ("the Property"), subject to the limitations set forth herein.

This covenant shall apply (1) to those releases at the Property which are to be fully described and delineated in a Response Action Outcome Statement(s) ("RAO") submitted to DEP in accordance with the terms and conditions of the Agreement and this covenant and which are, in fact, described and delineated in such RAO, and (2) to those releases of oil or hazardous material at the Property that have not been discovered as of the time of submittal of the RAO(s) to DEP and, therefore, are not the subject of the RAO(s); provided, however, that the response actions upon which the RAO relies meet the standard of care in effect at the time of submittal of the RAO(s) to DEP. Until such time as the RAO(s) is (are) submitted to the Department of Environmental Protection ("DEP"), this covenant shall apply to those releases at the Property, or any portion thereof, for which Applicant intends to perform, or cause to be performed, the response actions required by M.G.L. c. 21E and 310 CMR 40.0000, and which will be the subject of such RAO(s). Notwithstanding the foregoing, this covenant shall not apply (i) to new releases of oil or hazardous material at the Property occurring after the RAO is submitted to DEP, (ii) to any release of oil or hazardous material which Applicant, or any other person to whom the benefits of this covenant inure, causes or contributes to or causes to become worse than it otherwise would have been had such response actions not occurred, (iii) to any releases of oil or hazardous material at the Property that have not been discovered as of the time of submittal of the RAO(s) to DEP that could have been discovered had an assessment of the Property that meets the standards of care in effect at the time of submittal of the RAO(s) been performed, or (iv) to any release of oil or hazardous material not expressly described in the first two sentences of this paragraph. The release(s) to which this covenant applies shall be referred to collectively herein as "the covered matters." For the purposes of this covenant only, wholly passive

leaching of releases of oil or hazardous material which are covered matters shall not constitute a "new release."

Except as expressly set forth herein, the Commonwealth also covenants with Applicant not to sue Applicant's heirs to, successors to or assigns of Applicant's ownership interest in the Property, or any lessee, licensee or tenant of Applicant of all or any part of the Property, with respect to covered matters.

Notwithstanding the foregoing, this covenant not to sue:

(1) shall be void from its inception if any of the statements, certifications or information contained in the Application for the covenant, including any and all documents accompanying the Application, are materially incomplete, misleading, or false;

(2) shall be void if Applicant, or any other person to whose benefit this covenant inures, (i) fails to perform or cause to be performed any obligation contained in the RAO with respect to the Property, or (ii) violates, suffers, allows or causes the activities, uses and/or exposures upon which any Response Action Outcome Statement for the Property is based to change at any time to cause human or environmental exposure, or an increased potential for human or environmental exposure, to oil or hazardous material without an evaluation by an LSP in accordance with the MCP and without additional response actions, if necessary, to achieve or maintain a level of no significant risk of harm to health, safety, public welfare or the environment; provided, however, that the covenant shall be void only against those persons who failed to perform or cause to be performed such obligation or violated, suffered, allowed or caused such change in activities, uses or exposures, and against any other person to whose benefit this covenant inures subsequent to such failure or change in activities, uses and/or exposures; and

(3) shall be void if Applicant, or any other person to whose benefit this covenant inures, unreasonably denies DEP, its agents, contractors or authorized representatives, access to the Property to investigate, sample and inspect any records, conditions, equipment, practice or equipment to ensure compliance with and fulfillment of the terms of the Agreement, M.G.L. c. 21E, and the Massachusetts Contingency Plan ("MCP") or for purposes of conducting necessary response actions at the Property; provided, however, that the covenant shall be void only against those persons who unreasonably deny such access, and against any other person to whose benefit this covenant inures subsequent to such denial.

Additionally, the benefits of this covenant shall not run to any subsequent holder of Applicant's interest in the Property if such person or entity is or has been a potentially responsible

party ("PRP") within the meaning of M.G.L. c. 21E with respect to the release(s), or if such person or entity is affiliated with a PRP for the release(s) through any direct or indirect familial, contractual, corporate or financial relationship other than (i) that established by any instrument creating that person's interest in the Property, or (ii) that established by an instrument wholly unrelated to the disposal site and which would not otherwise render such person potentially liable as a result of its relationship with a PRP.

The benefits of this covenant may run to a subsequent holder of Applicant's interest in the Property prior to submittal of a Response Action Outcome Statement to DEP only if the subsequent holder completes Parts I and II of an Application and the Executive Office of Economic Affairs and DEP determine the project and such person are eligible under the Commonwealth's Pilot Covenant Not To Sue Program; provided, however, that the Executive Office of Economic Affairs' review shall not be required if (1) the proposed project is located within an Economic Target Area designated by the Economic Assistance Coordinating Council, or (2) the subsequent holder's proposed project is virtually the same project as that previously proposed by the Applicant. Subject to the other provisions of this covenant, the benefits of this covenant shall run to a subsequent holder of Applicant's interest in the Property after submittal of the RAO(s).

In order to maintain this covenant before a Class A or B Response Action Outcome is achieved at the Property, Applicant and any other person to whose benefit this covenant inures, shall:

(1) ensure that response actions proceeds in substantial compliance with the MCP;

(2) pay or cause to be paid the sum set forth in the Agreement, such sum representing Applicant's satisfaction of certain past response action costs and outstanding fees owing the Commonwealth for the release(s) at the Property; and

(3) perform, or cause to be performed, the necessary and appropriate response actions at the property in compliance with M.G.L. c. 21E, the MCP and other laws and regulations that apply to such response actions.

The issuance of this covenant shall not operate to bar the Commonwealth from auditing any person, site, or response action, or from requesting any person to provide information to DEP, or to relieve any person of his/her obligation to comply with such a request.

The issuance of this covenant shall not operate to relieve any person of his/her obligation to pay any permit or annual compliance assurance fees payable under 310 CMR 4.00.

COMMONWEALTH OF MASSACHUSETTS
Scott Harshbarger, Attorney General

By: _____
Nancy E. Harper, Esq.
Assistant Attorney General

Date:_____

COMMONWEALTH OF MASSACHUSETTS

_____, §§ _____, 19__

Then personally appeared the above-named Nancy E. Harper, Esq. and acknowledged the foregoing to be her free act and deed before me,

_____
Notary Public

My commission expires:

/ / / / /

/ / / / /

ATTACHMENT 1

LEGAL DESCRIPTION

EXHIBIT C

CERTIFICATE OF COMPLETION
PILOT COVENANT NOT TO SUE PROGRAM
M.G.L. c. 21E, s. 3A(j)

From: The Department of Environmental Protection

To: _____ ("Applicant")

Date of Issuance: _____

DEP Release Tracking No(s). _____

City(ies)/Town(s) _____

This Certificate of Completion ("Certificate") is issued in accordance with a certain Agreement entered into by DEP and the Commonwealth of Massachusetts with Applicant, dated _____, 19___, to signify only that the Department has received (i) a Class A or Class B Response Action Outcome Statement for the release(s) identified by the DEP Release Tracking Number(s) referenced above, and (ii) payment in full of the sum set forth in the Agreement, such sum representing all or a portion of the past costs and fees owing the Commonwealth for the release(s).

This Certificate shall not be deemed or construed to imply the Department's approval of the adequacy of any response action(s) undertaken at the subject property, nor shall issuance of this Certificate operate to bar the Department from auditing any person, site or response action, or from requesting any person to provide information to the Department, or to relieve any person of his/her obligation to comply with any such request.

Issued by: _____
Assistant Commissioner, Bureau of Waste Site Cleanup